

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Russell McCullough,

Bkry. Case No. 03-40363-NCD

And

Chapter 13 Case

Rose McCullough,

Debtor(s).

NOTICE OF HEARING AND APPLICATION
FOR ALLOWANCE OF COMPENSATION AS
ATTORNEYS FOR THE DEBTOR

To: Chapter 13 Trustee, United States Trustee and all parties in interest as specified in Local Rule 9013-3.

- I. Timothy C. Theisen the application, as counsel for Debtors Russell and Rose McCullough, moves the Court for the Relief requested below and gives notice of hearing.
- II. The Court will hold a hearing on this Application at 11:00 a.m. on February 18, 2004, at the United States Courthouse, Courtroom 7 West., 300 South 4th St., in Minneapolis, Minnesota.
- III. Any response to this application must be filed and delivered to Applicant no later than February 12, 2004, which is three days before the date set for hearing (excluding Saturdays, Sundays, or holidays), or filed and served by mail not later than February 6, 2004, which is seven days before the date set for the hearing (excluding Saturdays, Sundays, and holidays). UNLESS A RESPONSE OPPOSING THIS APPLICATION IS TIMELY FILED, THE COURT MAY GRANT THE APPLICATION WITHOUT A HEARING.
- IV. This Court has jurisdiction over this Application under 28 U. S. C. Section 158 and 1334, Bankruptcy Rule 5005 and Local Rule 2016-1. This Application arises under 11 U. S. C. Section 330. Applicant requests allowance of compensation for professional services rendered and for reimbursement of expenses incurred in connection with this case. This is

a core proceeding. The petition commencing this bankruptcy case was filed on January 16th, 2003. The Debtor's Chapter 13 Plan was confirmed by an Order of this Court, dated May 2, 2003. The Second Modified Chapter 13 Plan was confirmed by an Order of this Court, dated December 8, 2003. This case is now pending in this Court.

- V. This is an interim application, for all fees paid to date. The Applicant has received payments in the following amounts, on the date set forth below, from Debtors and/or Chapter 13 trustee.

Date	Amount
January 15, 2003	\$ 373.00
February 12, 2003	\$ 370.00
July 23, 2003	\$1605.88
October 28, 2003	\$ 125.00

The terms and condition of employment between the Applicant and the Debtor subject to Bankruptcy Court approval, are that Applicant will be paid \$1,450.00 Dollars for services reasonably necessary to represent the Debtor and additional fees at \$175.00 per hour for matters beyond the ordinary and customary services rendered, including adversarial proceedings. Plan modification was specifically excluding from the base rate for Chapter 13 services. Applicant knows of no allowed administrative expenses unpaid as of the date of his Application.

- VI. Applicant has rendered professional services in its capacity as general bankruptcy counsel to the Debtor as follows:

- A. General Matters. Advised the Debtor and took action with respect to numerous general matters in the course of the bankruptcy proceeding including overall advice to the Debtor on alternative available under the Bankruptcy Code, the gathering of basic information concerning the Debtor, preparation of bankruptcy petition schedules, statement of affairs and the chapter 13 plan, preparation for and attendance at the Section 341 hearing, receiving proofs of claim and case status updates, and final closing of case upon discharge. Because the wife was self-employed, and had not paid taxes in several years, and 2002 taxes were not done as of the time that we filed this, there was an additional complexity above and beyond the average case due to the self-employment and tax issues.
- B. Modification of Plan. The IRS claim came in substantially lower than we had originally estimated. Because this was a plan with graduated payments, and it was not entirely certain how the debtors were going to pay the additional payments in the future, we modified the plan in order to reduce the future increased payments. We were also able to check the status of claims, and update claims accordingly.
- C. Objection to confirmation. The mortgage company objected to confirmation, due to the fact that they had forced insurance on the debtors. The debtors did fax that to me, which was then faxed onto counsel, who faxed it to the mortgage company. My clients had indicated that they had already faxed this information to the mortgage company on several

prior occasions. The mortgage company's attorneys never did receive a response from their client, and subsequently withdrew their objection.

- D. Fee Application Number 1. Prepared and filed a fee application for Bankruptcy Court approval.
- E. Second Modified Plan. The Missouri office of Child Support submitted a priority claim, which had the effect of "busting" the Plan, as the first Modified Plan had insufficient funds to pay this as a priority claim. Applicant was unaware of this claim when the first Modified Plan was drafted. The Debtors' initial reaction was to dispute a portion of the claim, as Debtors had paid approximately \$4,000 towards this upon closing or refinancing of a prior home sale. However, Debtors had no records to this regard. Applicant sent a letter to Missouri requesting proof of that payment, to which no response was received. After numerous conversations with Debtor's wife, Applicant finally received the proof of such payment from Debtors on September 19th, and checked it against the child support records, which did in fact show that they had received the credit.

Another issue regarding the child support claim, was that a portion was for public assistance expended to a custodial parent, which is classified as a general unsecured claim, albeit a non-dischargeable claim. Several conversations to this effect took place, and Debtors ultimately decided to include payment of that non-dischargeable claim in full pursuant to Paragraph 8 of the Second Modified Plan.

Another issue leading up to the Second Modified Plan is the fact that the Minnesota Department of Revenue's claim is a tax lien, which gives it secured status. Therefore, said claim was reclassified as a secured claim, and paid pursuant to Paragraph 7, with interest.

Modifying a Chapter 13 Plan, even with very good software, can be a tricky proposition, especially where, as here, there are graduated payments, mortgage arrears, a car payment being "cramped down," and some of the claims had already been paid.

The Debtors had agreed to pay Applicant \$250.00 outside of the Plan, toward the fees incurred in drafting the Second Modified Plan, in two installments of \$125.00. Debtors only made one of said \$125.00 payments (which is one of the reasons for the discrepancy in the fees requested here, and the actual fees estimated in the Second Modified Plan).

- F. Motion to Dismiss. The Chapter 13 office moved for dismissal of the case, due to the above-mentioned Plan-busting claim. Applicant ultimately negotiated two continuances of the Motion for Dismissal, which was withdrawn upon filing of the Second Modified Plan.
- G. Fee Application Number 2. Prepared and filed a Fee Application for Bankruptcy Court approval.

- VII. The amount of time and compensation sought for each task described above are as follows:

	<u>TASK</u>	<u>HOURS</u>	<u>DOLLARS</u>
A.	General Matters	11.5	\$1,450.00(flat fee) (already approved)
B.	Modified Plan	2.1	\$367.50 (already approved)
C.	Objection to Confirmation	2.3	\$402.50 (already approved)
D.	Fee Application	2.0	\$ 100.00(flat fee) (already approved)

TOTALS: \$2320.00

E.	Second Modified Plan	4.5	\$787.50
F.	Motion for Dismissal	1.3	\$227.50
G.	Fee Application	<u>2.0</u>	<u>\$100.00 (flat fee)</u>
TOTALS:		7.8	\$1,115.00

VIII. Annexed hereto as Exhibit A and B, is an itemization of the time incurred by the Applicant stating the following:

A. Description of the task or proceeding.

B. A detailed list and description of each increment of time expended on the task or proceeding; and

C. The names of attorneys who expended the time.

IX. Annexed hereto as Exhibit A-7 is an itemization, including unit cost where applicable, of all expenses sought to be received in this Application

X. The attorneys who expended time on this matter is Timothy C. Theisen, who charges an hourly rate of \$175.00 Dollars per hour. The hourly rate is the usual and customary hourly rates charged by Applicant for the services of the individuals involved. It represents the customary compensation charged by comparably skilled practitioners in cases other than cases under Title 11 of the United States Code.

XI. Applicant's services to the Debtor in this case have a reasonable value of not less than \$3,435.00 Dollars. To date, the Applicant has received payments totaling \$2,473.88 Dollars from the Debtor and/or Chapter 13 Trustee.

XII. Applicant has incurred actual and necessary expenses in this case in the total amount of \$213.88 (already approved), plus \$20.00 Dollars for copies, and \$9.25 Dollars for postage, for the instant fee application.

XIII. All services for which compensation is requested by Applicant were performed on behalf of the Debtor and not on behalf of any committee, creditor or other person. The services were necessary to the administration of the successful completion of this case. The

services were performed within a reasonable amount of time commensurate with the complexity, importance and nature of the problem, issue or task addressed.

- XIV. The amount requested herein constitutes reasonable compensation for actual and necessary services rendered by Applicant based on the nature, the extent and value of such services, the time spent on such services and the costs of comparable services other than in a case under Title 11.
- XV. Applicant has not entered into any agreement express or implied with any other party in interest, including the Debtor or any creditor, receiver, trustee or representative of any of them, or with any attorneys for such party in interest in the proceedings, for the purpose of fixing fees or other compensation to be paid to such party in interest in the proceedings for services rendered or expenses incurred in connection therewith from the assets of the estate in excess of the compensation allowed by law.

WHEREFORE, Applicant respectfully requests that the Court enter its Order (a) allowing compensation to Applicant in the amount of \$1,115.00 Dollars and reimbursement of expenses in the amount of \$29.25 Dollars for a total of \$1,144.25 Dollars; and (b) allowing Applicant to apply the \$125.00 he has already received toward said fees and expense, and (c) directing the Chapter 13 Trustee to pay the amount of \$1,019.25 Dollars to Applicant from payments received by the Trustee pursuant to the Debtor's Chapter 13 Plan.

Dated: December 26, 2003

_____/s/ Timothy C. Theisen_____
Timothy C. Theisen
229 Jackson Street
Suite 105
Anoka, MN 55303
Telephone No. (763) 421-0965

UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

In re:

Russell McCullough,

Bkry. Case No. 03-40363-NCD

and

Chapter 13 Case

ORDER

Rose McCullough,

Debtor(s).

This matter came on for hearing before the Honorable Nancy Dreher, on February 18, 2004 at 11:00 a.m. in Room-7W at the US Bankruptcy Court, Minneapolis, MN on the motion of Timothy C. Theisen (The Applicant) for allowance and payment of legal fees and reimbursement of costs.

Upon all the files, records and proceedings herein and there being no objection filed with the Court, IT IS HEREBY ORDERED:

1. The Applicant is awarded \$1,115.00 Dollars as reasonable compensation for legal services and \$29.25 Dollars for reimbursement for actual and necessary costs for a total of \$1,144.25 Dollars.
2. The Applicant may apply the \$125.00 Dollars he has received from Debtor in partial satisfaction of his award.
3. The Chapter 13 Trustee is authorized and directed to pay the sum of \$1,019.25 Dollars to Applicant as funds become available pursuant to the Debtor's Chapter 13 Plan.

Dated: _____

Nancy C. Dreher
Judge of Bankruptcy Court

Timothy Casey Theisen, P.A.
229 Jackson St
Anoka MN 55303

Invoice submitted to:
RUSSELL AND ROSE MCCULLOUGH
C/O BANKRUPTCY COURT

JUN 19 2003

In Reference To:MOD PLAN 2
Invoice #10715

Professional services

	<u>Hrs/Rate</u>	<u>Amount</u>
6/11/03 call from chapter 13 office; letter to client	0.40 175.00/hr	70.00
6/16/03 Telephone call from client; note to file	0.20 175.00/hr	35.00
For professional services rendered	0.60	\$105.00
Balance due		<u>\$105.00</u>

Timothy Casey Theisen, P.A.
229 Jackson St
Anoka MN 55303

Invoice submitted to:
RUSSELL AND ROSE MCCULLOUGH
C/O BANKRUPTCY COURT

JUL 18 2003

In Reference To:MOD PLAN 2
Invoice #10761

Professional services

	<u>Hrs/Rate</u>	<u>Amount</u>
7/14/03 Review file; message to client; forward memo to file	0.20 175.00/hr	35.00
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For professional services rendered	0.20	\$35.00
Previous balance		\$105.00
		<hr/>
Balance due		<u>\$140.00</u>

Timothy Casey Theisen, P.A.
229 Jackson St
Anoka MN 55303

Invoice submitted to:
RUSSELL AND ROSE MCCULLOUGH
C/O BANKRUPTCY COURT

AUG 21 2003

In Reference To: MOD PLAN 2
Invoice #10811

Professional services

	<u>Hrs/Rate</u>	<u>Amount</u>
7/21/03 Telephone call from client; letter to Missouri child support office	0.30 175.00/hr	52.50
8/11/03 Returned telephone call to client; note to file	0.20 175.00/hr	35.00
For professional services rendered	0.50	\$87.50
Previous balance		\$140.00
Balance due		<u>\$227.50</u>

Timothy Casey Theisen, P.A.
229 Jackson St
Anoka MN 55303

Invoice submitted to:
RUSSELL AND ROSE MCCULLOUGH
C/O BANKRUPTCY COURT

SEP 19 2003

In Reference To:MOD PLAN 2
Invoice #10860

Professional services

	<u>Hrs/Rate</u>	<u>Amount</u>
9/19/03 Fax from client; review child support records	0.30 175.00/hr	52.50
For professional services rendered	0.30	\$52.50
Previous balance		\$227.50
Balance due		<u>\$280.00</u>

Timothy Casey Theisen, P.A.
229 Jackson St
Anoka MN 55303

Invoice submitted to:
RUSSELL AND ROSE MCCULLOUGH
C/O BANKRUPTCY COURT

OCT 21 2003

In Reference To: MOD PLAN 2
Invoice #10902

Professional services

	<u>Hrs/Rate</u>	<u>Amount</u>
9/21/03 Start working on modified plan; review file; message to client; note to file	0.40 175.00/hr	70.00
9/30/03 Telephone call from Dawn Schaag; note to file	0.20 175.00/hr	35.00
10/1/03 Call Rose	0.20 175.00/hr	35.00
Call from Rose	0.10 175.00/hr	NO CHARGE
10/7/03 Call Cheryl at Minnesota Department of Revenue; call client; draft modified plan; email to Tom Johnson; letter to client	1.30 175.00/hr	227.50
Email from Tom Johnson	0.10 175.00/hr	NO CHARGE

	<u>Hrs/Rate</u>	<u>Amount</u>
10/8/03 Email from Deb at Chapter 13 office; generate payment schedule in PDF; email to Deb	0.10 175.00/hr	17.50
For professional services rendered	2.40	\$385.00
Previous balance		\$280.00
Balance due		<u>\$665.00</u>

Timothy Casey Theisen, P.A.
229 Jackson St
Anoka MN 55303

Invoice submitted to:
RUSSELL AND ROSE MCCULLOUGH
C/O BANKRUPTCY COURT

NOV 22 2003

In Reference To: MOD PLAN 2
Invoice #10956

Professional services

	<u>Hrs/Rate</u>	<u>Amount</u>
10/24/03 Call Rose; resend documents	0.20 175.00/hr	NO CHARGE
10/28/03 Received sign page; get date; draft motion, memo and fee disclosure; serve and file	0.50 175.00/hr	87.50
For professional services rendered	0.70	\$87.50
Additional charges:		
11/5/03 copies at 20 cents each		20.00
Postage		9.25
Total costs		\$29.25
Total amount of this bill		\$116.75
Previous balance		\$665.00

RUSSELL AND ROSE MCCULLOUGH

Page 2

Balance due

Amount

\$781.75

Timothy Casey Theisen, P.A.
229 Jackson St
Anoka MN 55303

Invoice submitted to:
RUSSELL AND ROSE MCCULLOUGH
C/O BANKRUPTCY COURT

DEC 19 2003

In Reference To:MOD PLAN 2
Invoice #11004

Professional services

	<u>Hrs/Rate</u>	<u>Amount</u>
12/17/03 Received order confirming modified plan	0.20 175.00/hr	35.00
For professional services rendered	0.20	\$35.00
Previous balance		\$781.75
Balance due		<u>\$816.75</u>

Timothy Casey Theisen, P.A.
229 Jackson St
Anoka MN 55303

Invoice submitted to:
RUSSELL AND ROSE MCCULLOUGH
C/O BANKRUPTCY COURT

SEP 19 2003

In Reference To: MOTION FOR DISMISSAL
Invoice #10859

Professional services

	<u>Hrs/Rate</u>	<u>Amount</u>
9/5/03 Received Motion for Dismissal; calendar; return telephone call to client; memo to file; forward to client	0.60 175.00/hr	105.00
For professional services rendered	<u>0.60</u>	<u>\$105.00</u>
Balance due		<u>\$105.00</u>

Timothy Casey Theisen, P.A.
229 Jackson St
Anoka MN 55303

Invoice submitted to:
RUSSELL AND ROSE MCCULLOUGH
C/O BANKRUPTCY COURT

OCT 21 2003

In Reference To: MOTION FOR DISMISSAL
Invoice #10901

Professional services

	<u>Hrs/Rate</u>	<u>Amount</u>
9/25/03 Telephone call from client; email to Tom Johnson	0.40 175.00/hr	70.00
9/26/03 Email from Tom Johnson; calendar new date; forward to client	0.20 175.00/hr	35.00
For professional services rendered	0.60	\$105.00
Previous balance		\$105.00
Balance due		<u>\$210.00</u>

Timothy Casey Theisen, P.A.
229 Jackson St
Anoka MN 55303

Invoice submitted to:
RUSSELL AND ROSE MCCULLOUGH
C/O BANKRUPTCY COURT

NOV 22 2003

In Reference To: MOTION FOR DISMISSAL
Invoice #10955

Professional services

	<u>Hrs/Rate</u>	<u>Amount</u>
10/28/03 Email to and from Tom Johnson regarding continuance	0.10 175.00/hr	17.50
For professional services rendered	0.10	\$17.50
Previous balance		\$210.00
Balance due		<u>\$227.50</u>

UNSWORN CERTIFICATE OF SERVICE

I, Tara Buganski, declare under penalty of perjury that on December 31, 2003, I mailed copies of the foregoing Notice of Hearing and Application for Allowance of Compensation as Attorneys for Debtor by first class mail postage prepaid to each entity named below at the address stated below for each entity:

All Creditors (see attached sheet)

Jasmine Keller
310 Plymouth Building
12 South 6th St.
Minneapolis, MN 55402

US Trustee's Office
1015 US Courthouse
300 South Fourth Street
Minneapolis, MN 55401

Russell and Rose McCullough
2646 Girard Ave. N.
Minneapolis, MN 55411

Executed on: December 31, 2003

Signed: /e/ Tara Buganski

Tara Buganski
229 Jackson Street
Suite 105
Anoka, MN 55303

McCulloughcreditor

ANCHOR SAVINGS AND LOAN
PO BOX 7860
MADISON, WI 53707-7860

ASSET RESOURCES
2989 BROOKDALE DR
BROOKLYN PARK, MN 55444

BALOGH BECKER, LTD
4150 OLSON EMMORIAL HIGHWAY, STE 200
MINNEAPOLIS, MN 55422-4804

C.U. RECOVERY INC
26263 FOREST BLVD
WYOMING, MN 55092

CAPITAL ONE
11011 W. BROAD ST
GLEN ALLEN, VA 23060-5937

CAPITAL ONE
1011 W. BROAD ST
GLEN ALLEN, VA 23060-5937

CLIENT SERVICES INC.
3451 HARRY SOUTH TRUMAN BLVD
ST. CHARLES, MO 63301

DIVISION OF CHILD SUPPORT
PO BOX 1527
2009 ST. MARYS BLVD
JEFFERSON CITY, MO 65109-1101

FINGERHUT
16 MCLELAND RD
ST. CLOUD, MN 56303-2049

FMC - OMAHA SERVICE
PO BOX 54200
OMAHA, NE 68154-8000

HENNEPIN COUNTY PROPERTY TAX
A600 GOVERNMENT CENTER
300 S 6TH ST
MPLS, MN 55487-0060

IRS
KANSAS CITY, MO 64999

LEONARD OBRIEN WILFORD SPENCER GALE
55 E 5TH ST

McCulloughcreditor

STE 800
ST PAUL, MN 55101-1718

LITTON MORTGAGE SERVICE
5373 W ALABAMA ST STE 600
HOUSTON, TX 77056-5998

MERRICK BANK CORP
C/O CMS
PO BOX 9201
OLD BETHPAGE, NY 11804-9001

MINNEAPOLIS COMMUNITY TECH COLLEGE
1501 HENNEPIN AV
MPLS, MN 55403

MISSOURI CHILD SUPPORT #30492011
C/O DAWN SCHAAG
11 SOUTH WATER
LIBERTY, MO 64068

MISSOURI CHILD SUPPORT #60456422
C/O DAWN SCHAAG
11 SOUTH WATER
LIBERTY, MO 64068

MN DEPARTMENT OF REVENUE
ST. PAUL, MN 55146

PLAZA ASSOCIATES
370 SEVENTH AV
15TH FLOOR
NEW YORK, NY 10001

PROFESSIONAL RECOVERY PERSONNEL, INC
7040 LAKELAND AVE N
MINNEAPOLIS, MN 55428

PROVIDIAN BANCORP
PO BOX 9176
PLEASANTON, CA 94566-9176

SEARS
13200 SMITH RD
CLEVELAND, OH 44130-7802